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Office-Supreme Court, U.S.
FILED
OCT 4 1958
JAMES R. BROWNING, Clerk

Supreme Court of the United States

October Term, 1958

No. 330

THE ITEM COMPANY
Petitioner

versus

NEW ORLEANS NEWSPAPER GUILD
Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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THE ITEM COMPANY
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NEW ORLEANS NEWSPAPER GUILD
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OPPOSITION TO PETITION FOR CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner seeks certiorari to review a judgment of the Court of Appeals for the Fifth Circuit. Respondent respectfully submits that the judgment of the Fifth Circuit Court was correct and Petitioner's request for certiorari should be denied.

OPINION BELOW AND JURISDICTION

The opinion of the Court of Appeals, rendered on June 28, 1958, is printed in Appendix of Petitioner's request for certiorari.

QUESTION PRESENTED

The question presented is not novel as Petitioner asserts but has been presented to the Court recently and definitively decided.[1]

The question presented for review is:

Does Section 301 of the Taft-Hartley Act afford a right to a labor organization to require an employer to specifically perform his agreement to arbitrate grievances?

This question was answered in the affirmative by this Court in the *Lincoln Mills*, *Goodall-Sanford* and *General Electric* cases cited above.

STATUTE INVOLVED

Labor Management Relations Act, 1947, Section 301 (Chapter 120, Title III, Section 301; 61 Stat. 156, Section 301; 29 U.S.C.A. 185):

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> "(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose ac-

[1] *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448; *Goodall-Sanford v. Textile Workers*, 353 U. S. 550; *General Electric v. Local 205*, 353 U. S. 547.

tivities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT OF THE CASE

The Facts

Petitioner is in the newspaper business and is engaged in a business affecting commerce within the meaning of the Act.

On or about July 15, 1955, Respondent and Petitioner entered into a collective bargaining agreement; said agreement was renewed with certain amendments, not here material, effective April 10, 1957 (R. 11-31).

Article 15, Section 1, of the first paragraph of the agreement provides:

> "There shall be no dismissals except for just and sufficient cause and to reduce the force . . ."

Article 12 of the agreement provides a detailed procedure to be followed in processing grievances to arbitration. We quote herewith pertinent sections:

> "Section 1. The Guild (union) shall designate a committee of its own choosing to take up with

the Publisher *any matter arising from the application of this agreement or affecting the relations of the employees and Publisher under this agreement . . .*"

(Emphasis ours.)

". . . (b) If a grievance is raised under (a) of this section and Section 1 of this article and is not settled within thirty-five calendar days after receipt of written notice thereof (this time may be extended by mutual agreement), within the next 30 calendar days either party may request that the matter be submitted to arbitration by serving on the other party written notice of such request, in which case such grievance will be arbitrated in accordance with the following procedures: . . ."

On February 20, 1957, Ewing Poteet, an employee covered by the terms of the aforementioned contract, was discharged by Petitioner (R. 32, 34).

On March 20, 1957, Respondent filed a written notice of grievance protesting Mr. Poteet's discharge as being violative of the above quoted Article 15 of the contract (R. 35).

On March 25, 1957, Petitioner's management met with a committee from Respondent, at which meeting Mr. Poteet's discharge was discussed (Petitioner's reasons for discharge are set out in R. 32-33).

On April 2, 1957, the parties agreed that for 90 days beginning April 11, 1957, "conditions for the employees of the editorial and news department, including both Guild and non-Guild members (would) continue unchanged, and any

adjustment in the scales of wages (would) be retroactive to April 11, 1957."

The above constituted an extension of the old contract which remained in effect until May 24, 1957, at which time a new contract was entered into effective April 11, 1957. There was no time during which a contract was not in effect between the parties.

On April 3, 1957, Respondent asked Petitioner to arbitrate Poteet s discharge, which Petitioner refused to do, saying the request for arbitration had been filed prematurely.

On May 21, 1957, Respondent again requested that the propriety of Poteet's discharge be arbitrated (R. 38).

On May 25, 1957, Petitioner advised Respondent that the question of its right to discharge Poteet was not an appropriate subject for arbitration, and that it was accordingly not required to arbitrate the matter (R. 39).

Respondent filed this suit on July 8, 1957.

ARGUMENT

Petitioner ignores the precise demand made by Respondent. The right to arbitrate is a *union* right. Whether the grievance involves the contractual right of an employee or union is immaterial. Respondent does not ask the Court to decide the propriety of the discharge. It seeks to obtain enforcement of a *union* right, the right to arbitrate. Had Respondent attempted to have the trial court determine whether Poteet's discharge was proper or not, the case would have fallen because of the holding in the *Westinghouse* case.[2]

[2] *Westinghouse Salaried Employees v. Westinghouse Electric Corporation*, 348 U. S. 437.

As Judge Hutcheson said in the case at bar:

> "We think it plain that appellant, in arguing that the suit is within the prohibition of the Westinghouse case, has misunderstood the demand being made by appellee, has in short misconceived the nature of its suit, which was filed for the sole purpose of obtaining enforcement of a contract agreement between the Union and employer for arbitration, an agreement existing between union and employees and not employee and employer. The court is not being asked to determine the propriety of Poteet's discharge or to afford him any remedy. Appellee simply requests that appellant perform its obligation which runs to the union and is therefore a union controversy and not one dealing with uniquely personal rights of employees."

The *Lincoln Mills* case leaves no doubt as to the law concerning the question of whether a union can require an employer to proceed with its contractual obligation to arbitrate grievances. This Court concluded that the substantive law to be applied in suits under Section 301(a) is "federal law which the courts must fashion from the policy of our national laws," and further that the Court's construction of Section 301(a) was that the agreement to arbitrate grievance disputes, contained in "collective bargaining agreements should be specifically enforced." Almost all grievances are filed on behalf of an employee who, the union claims, has not received wages or conditions to which he is entitled under the agreement, or that he has been wrongfully dealt with in violation of its terms. The right to have these grievances heard by arbitration is a union right enforceable under Section 301(a).

This Court, in *Lincoln Mills*, clearly differentiated between the *Westinghouse* case and the *Lincoln Mills* case when it said:

"It seems, therefore, clear to us that Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes . . ."

And then in a footnote it said:

"Employees v. Westinghouse Corp., 348 U.S. 437, 34 LRRM 2643, is quite a different case. There the union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts. The question here concerns the right of the union to enforce the agreement to arbitrate which it had made with the employer."

Justices Burton and Harlan, in a concurring opinion, said:

"This suit was brought in a United States District Court under Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156, 29 USC, Sec. 185, seeking specific enforcement of the arbitration provisions of a collective bargaining contract. The District Court had jurisdiction over the action since it involved an obligation running to a union—a union controversy —and not uniquely personal rights of employees sought to be enforced by a union. Cf. Association of Westinghouse Employees v. Westinghouse Elec. Corp., 348 U.S. 437, 35 LRRM 2643. Having jurisdiction over the suit, the court was not powerless to fashion an appropriate federal remedy. The power to decree specific performance of a collectively bargained agreement to arbitrate finds its source in Section 301 itself, and in a Federal District Court's inherent equitable power, nurtured by a congressional policy

to encourage and enforce labor arbitration in industries affecting commerce."

To further show the lack of merit in the Petitioner's defense, we respectfully point out to the Court that the grievance in the *Lincoln Mills* case sought restoration of work loads and job assignments of employees, plus back pay for certain employees for increased work loads; the controversy in the *Goodall-Sanford* case arose over the layoff of employees incident to curtailment of production and a liquidation of the plants in question. The respondent protested the termination of employment, claiming that the employees should not have been discharged, thus preserving certain accrued rights of employees to fringe benefits (such as insurance, pension and vacation), payable to laid-off employees; in the *General Electric Company* case, respondent filed grievances, one of which asked for higher pay for an employee *and another complained that an employee had been wrongfully discharged.* We respectfully point out to the Court that every single grievance filed in all three cases involved uniquely personal rights of the employees and, undoubtedly, the union could not have had these rights enforced directly. However, in the three mentioned cases, the issue was not whether the Court should grant contractual relief to the employees, but whether the Court should grant contractual relief to the union, by requiring the employer to carry out its contractual obligation to arbitrate.

We submit that Petitioner's interpretation of the *General Electric* case is equally erroneous. The First Circuit concluded that an agreement to arbitrate was not enforceable under Section 301(a) but under the Federal Arbitration Act. It went further and said that the District Court could determine *first* whether the question

was arbitrable or not, i.e., had a question been raised by the union under which, pursuant to terms of the contract, an arbitrator would be authorized to act. Then if the Court decided that the question or questions were arbitratable, the union could use the Federal Arbitration Act to require the employer to go through with his agreement to arbitrate. The Court further said that the question of the arbitrability of the grievance could be submitted to the arbitrator. This Court apparently agreed with the First Circuit's thinking as to the District Court's right to determine the arbitrability of an issue but said that the remedy was by way of 301(a) and not the Federal Arbitration Act.

We submit that the arbitrability of the discharge of Poteet is clear. First, the contract imposes upon the Petitioner the obligation to discharge an employee only for "*just and sufficient cause.*" Respondent has taken the position that the discharge was not for "*just and sufficient cause*" and has filed a grievance under the terms of the agreement. When the Petitioner refused to reinstate Poteet as requested in the grievance, the union exercised its written contractual right to have the question of whether Poteet was discharged for "just and sufficient cause" decided by an arbitrator. Further, Poteet's discharge is arbitrable under the broad authorization embodied in Article 12, Section 1, which reads in part:

> "the Guild shall designate a committee of its own choosing to take up *any matter* arising from the application of this agreement or *affecting the relations of the employees and the Publisher under this agreement.*" (Emphasis ours).

We respectfully submit that the case at bar does not present any unsettled question to this Court and Petitioner's request for certiorari should be denied.

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